

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

VOLKSWAGEN GROUP OF AMERICA, INC.,

Plaintiff,

v.

**THE UNINCORPORATED ASSOCIATIONS
IDENTIFIED IN SCHEDULE A,**

Defendants.

Civil Action No. 1:20-cv-01437

CARTOOLFTY AND ECARTOOL’S ANSWER AND AFFIRMATIVE DEFENSES

Defendant eBay stores Cartoolfty and Ecartool (collectively “Defendants”) file their Answer and Affirmative Defenses to Volkswagen Group of America, Inc.’s (“Plaintiff”) Complaint (Dkt. No. 1) (the “Complaint”). Defendants deny the allegations in the Complaint unless expressly admitted in the following paragraphs. Defendants’ specific responses to the numbered allegations of the Complaint are in the below numbered paragraphs as follows:

NATURE OF THE SUIT

1. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

JURISDICTION AND VENUE

2. Denied.

3. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

4. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

PARTIES

5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

Volkswagen

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

12. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

Audi

13. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

15. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

16. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

Bentley

17. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

19. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

Lamborghini

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

23. Defendants lack knowledge or information sufficient to form a belief about the

truth of the allegations in this paragraph, and therefore deny them.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

25. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

The Defendants

26. Defendants admit they reside in China and offer products on eBay. Except as so admitted, Defendants deny the remaining allegations in this paragraph to the extent those allegations are made against Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

27. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

DEFENDANTS' UNLAWFUL CONDUCT

28. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

29. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

30. Defendants admit they reside in China. Except as so admitted, Defendants deny

the remaining allegations in this paragraph to the extent those allegations are made against Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

31. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

32. Defendants admit Exhibits 8-10 purport to be images from stores. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

33. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

34. With respect to Defendants, Defendants admit that they are not licensed or authorized to use any of the VW Brands' Trademarks and are not authorized retailers of genuine VWGoA Products. Except as so admitted, Defendants deny the remaining allegations in this paragraph with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

35. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

36. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any

other parties, and therefore deny them.

37. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

38. Defendants admit that they each operate one PayPal account. Except as admitted, Defendants deny the remainder of the paragraph with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

39. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

40. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

JOINDER IS APPROPRIATE

41. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

42. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

43. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any

other parties, and therefore deny them.

COUNTER I – TRADEMARK INFRINGEMENT AND COUNTERFEITING
(15 U.S.C. §1114)

44. Defendants hereby and incorporates by reference their answers set forth in paragraphs 1 through 43.

45. Defendants admit that Plaintiff has alleged a claim of trademark infringement and counterfeiting. However, Defendants deny that Plaintiff is entitled to any such relief with respect to Defendants. Except as so admitted, Defendants deny the remaining allegations in this paragraph with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

46. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

47. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this, and therefore deny them.

48. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

49. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

50. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any

other parties, and therefore deny them.

COUNT II – FALSE DESIGNATION OF ORIGIN
(15 U.S.C. §1125(a))

51. Defendants hereby and incorporates by reference their answers set forth in paragraphs 1 through 50.

52. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

53. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

54. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

55. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

COUNT III – TRADEMARK DILUTION
(15 U.S.C. §1125(c))

56. Defendants hereby and incorporates by reference their answers set forth in paragraphs 1 through 55.

57. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, and therefore deny them.

58. Defendants lack knowledge or information sufficient to form a belief about the

truth of the allegations in this paragraph, and therefore deny them.

59. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

60. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

61. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

62. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

63. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

64. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

65. Denied with respect to Defendants. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph with respect to any other parties, and therefore deny them.

PRAYER FOR RELIEF

Plaintiff's prayer for relief is an averment to which no response is required. To the extend a response is deemed to be required, Defendants deny that Plaintiff is entitled to any such relief with respect to Defendants.

**DEFENDANTS' AFFIRMATIVE
DEFENSES**

Without assuming any burden they would not otherwise bear, Defendants assert the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE:
FAILURE TO STATE A CLAIM**

1. The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE:
FAIR USE**

2. The claims made in the complaint are barred, in whole or in part, by the doctrine of fair use, nominative fair use and/or descriptive use.

**THIRD AFFIRMATIVE DEFENSE:
INNOCENT INFRINGEMENT**

3. The claims are barred, in whole or in part, because any infringement, if any, was innocent.

**FOURTH AFFIRMATIVE DEFENSE:
NON-INFRINGEMENT**

4. Defendants have not infringed any applicable trademarks under federal or state law.

**FOURTH AFFIRMATIVE DEFENSE:
NO CAUSATION**

5. Plaintiff's claims against Defendants are barred because Plaintiff's damages, if any, were not caused by Defendants.

**FIFTH AFFIRMATIVE DEFENSE:
NO DAMAGE**

6. Without admitting that the Complaint states a claim for relief, there has been no damage in any amount, manner or at all by reason of any act alleged against Defendants in the Complaint, and Plaintiff is therefore not entitled to any relief against Defendants.

**SIXTH AFFIRMATIVE DEFENSE:
RESERVATION OF RIGHT TO ASSERT FURTHER DEFENSES**

7. Defendants reserves the right to amend its answer, including asserting additional defenses and counterclaims consistent with the facts discovered in this case.

DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants request judgment against Plaintiff as follows:

- a. that the Court enter a take-nothing judgment against Plaintiff;
- b. that Defendants be awarded costs of suit incurred in defense of this action;
- c. that the Court award Defendants all other and further relief, both at law and in equity, to which it may be justly entitled.

DATED April 23, 2021.

Respectfully submitted,

By: /s/ Steven War
Steven War (VSB # 45048)

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**ATTORNEY FOR DEFENDANTS
CARTOOLFTY AND ECARTOOL**

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2021, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Virginia, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Steven War
Steven War